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20 **UNITED STATES DISTRICT COURT**
 21 **NORTHERN DISTRICT OF CALIFORNIA**

22 ANIBAL RODRIGUEZ, SAL CATALDO,
 23 JULIAN SANTIAGO, and SUSAN LYNN
 24 HARVEY, individually and on behalf of all
 25 others similarly situated,

26 Plaintiffs,

27 v.

28 GOOGLE LLC,

Defendant.

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Case No. 3:20-cv-04688-RS

**PLAINTIFFS' NOTICE SEEKING
 ADMISSION OF PX-4 IN THEIR
 REBUTTAL CASE**

Judge: Hon. Richard Seeborg
 Trial Date: August 18, 2025
 Courtroom: 3, 17th Floor

1 **PLAINTIFFS' NOTICE SEEKING ADMISSION OF PX-4 IN THEIR REBUTTAL CASE**

2 Google spent much of its defense case asserting that it intended to make its disclosures
 3 clear, and that there was no intent by Google to mislead users. *See, e.g.*, Trial Tr. 374:14-375:14
 4 (Monsees); Trial Tr. 416:9-12 (Monsees); Trial Tr. 429:2-6 (Monsees); Trial Tr. 1155:14-17
 5 (Ganem); Trial Tr. 1183:5-12 (Ganem); Trial Tr. 1375:2-1376:1 (Hoffman); Trial Tr. 1376:9-
 6 1377:13 (Hoffman); Trial Tr. 1381:10-24 (Hoffman); Trial Tr. 1385:22-1386:8 (Hoffman); Trial
 7 Tr. 1387:1-11 (Hoffman). In doing so, Google made PX-4 admissible evidence on rebuttal. As
 8 explained below, the “David” referred to in PX-4 is David Monsees. PX-4 should be admitted as
 9 relevant party admissions that are both admissible and highly relevant rebuttal evidence.

10 PX-4 is a 2016 Google email exchange stating that Google has been “*intentionally vague*”
 11 with its English language sWAA disclosures to users. The subject line for PX-4 is “Effect of
 12 flipping sWAA.” PX-4 includes a portion labeled “David’s comments” that first describes how
 13 “some of the *data for a user* was collected within their Google Account and some of it was
 14 collected *outside of their Google Account*” and then states: “*In English*, we’re *intentionally*
 15 *vague* because the technical details are complex and it could sound alarming to users” (In
 16 addition to this comment from “David”, the email concludes with a statement by Jens Mueller:
 17 “The English text is vague enough to not make this distinction clear.”) Mr. Miraglia, who received
 18 a copy of PX-4, testified about it in his deposition.

19 As Google admitted in its summary judgement reply brief, the “David” in this document
 20 was Mr. Monsees. *See* Dkt. 406 at 11 (discussing this document and stating “**Dave Monsees**’
 21 response was that WAA is described at a *level of technical vagueness so that it is accurate to*
 22 *users*”). Mr. Monsees agreed “the buck stops with” him with respect to how the WAA and sWAA
 23 controls are described to users. Trial Tr. 366:10-17. PX-4 on its face identifies Mr. Mueller as a
 24 Google Software Engineer. Mr. Miraglia also testified that Mr. Mueller was an engineer working
 25 on the “Consent Bump’ project, which dealt with sWAA disclosures. Miraglia Tr. at 102:8-10. As
 26 such, Mr. Monsees and Mr. Mueller were both Google employees discussing Google’s English
 27 language disclosure to users, regarding sWAA-off data, and how those disclosures were

“intentionally vague” and “vague enough” to not make clear to users that Google would save data ***outside*** their so-called Google Accounts.

While the Court originally ruled that PX-4 would not be admitted with the deposition clips for Mr. Miraglia, that email exchange is now highly relevant as rebuttal evidence.

Because it contains admissions, PX-4 need not be admitted through a witness. However, if the Court prefers that it be admitted through a witness, Plaintiffs can do so through minimal additional Eric Miraglia deposition designations, who received PX-4 and whose deposition testimony covered PX-4. The parties have already prepared designations and counter-designations about Mr. Miraglia's testimony on PX-4. There is no need to call Mr. Monsees back to testify again. Google's representation in its prior filing is sufficient to establish this statement embedded in PX-4 as a party admission.

Dated: August 28, 2025

Respectfully Submitted,

By: /s/ Mark C. Mao
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